

Debtor(s).

Location: 1415 State Street, Santa Barbara, CA

F 6004-2.NOTICE.SALE

Overbid procedure (if any): See attached.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

United States Bankruptcy Court

1415 State Street, Santa Barbara, CA 93101

September 30, 2020

11:30 a.m.

Courtroom 201

*** Due to the COVID-19 public health emergency, the courtroom will be closed to the public and the hearing will be held via ZoomGov, which provides both audio and video access. All parties and members of the public may connect to the hearing free of charge. ZoomGov connection information for this hearing will be posted on the Court's public calendar for Judge Barash, accessible on the court's website:**

<http://ecf-ciao.cacb.uscourts.gov/CiaoPosted/default.aspx>

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

Sandra K. McBeth, Ch. 7 Trustee

7343 El Camino Real #185

Atascadero, CA 93422

Telephone: (805) 464-2959; Fax: (805) 357-5905

Street Address:

7305 Morro Road, Suite 206

Atascadero, CA 93422

email: smcbeth@mcbethlegal.com

Date: Sept. 3, 2020

OVERBID PROCEDURES

The proposed sale of the Property is subject to higher and better offers being received and accepted by the Trustee prior to the scheduled hearing on this motion. Any party wishing to overbid shall deposit a cashier's check for \$21,600 (the amount of the deposit made by Yevdayev) made payable to "Sandra K. McBeth, chapter 7 trustee" and sent to the Trustee at 7343 El Camino Real, #185, Atascadero, CA 93422. The deposit check must be received by the Trustee no later than 5:00 p.m. PST five (5) business days prior to the hearing (the "Bid Qualification Deadline"). Moreover, any party wishing to overbid also shall provide the Trustee, by the Bid Qualification Deadline, with sufficient evidence to establish that it will be able to close if it is the successful bidder and its bid is approved by the Court. **Interested parties who do not comply with these requirements will not be permitted to bid at the sale.**

The initial minimum overbid will be \$15,000. Subsequent overbids will be in minimum increments of \$5,000. All other terms of the sale shall be upon the same terms and conditions as the proposed sale to Yevdayev described in the Counter-Offer attached hereto.

If one or more qualified overbids are received by the Bid Qualification Deadline, an auction of the Property shall be held on the date and time that is scheduled for the hearing on approval of this motion per the Court's instructions for the hearing due to COVID-19 considerations. At the conclusion of the auction, the Trustee will ask the court to confirm the results of the auction and to approve the sale of the Property to the highest bidder.

The successful bidder at the auction shall open escrow within three business days following the hearing on this motion and the approval of this motion by the court. The \$21,600 cashier's check referenced above shall be forfeited by the successful bidder if escrow has not opened as set forth above or the sale does not close within fifteen days of the entry of an order by the court approving this sale through no fault of the Trustee. Moreover, in the event of forfeiture or an inability to close by the successful bidder, the Trustee shall be entitled to sell the Property to the next highest bidder at the auction, without further notice or order of the Court, provided such sale (other than the purchase price) is upon the same terms and conditions as the proposed sale to Yevdayev as set forth in Counter Offer attached hereto.

**Counteroffer re Purchase and Sale of
16555 Morro Road, Atascadero, CA 93422**

This is a counteroffer ("Counteroffer") to the July 18, 2020, "CA Residential Purchase Agreement and Joint Escrow Instructions" received from Neli Yevdayev (the "Buyer's Offer") for the purchase of the real property commonly known as 16555 Morro Road, Atascadero, CA 93422; APNS: 046-222-027 and 046-222-028 ("Property"), by Neli Yevdayev ("Buyer") from Sandra McBeth, solely in her capacity as the Chapter 7 Trustee ("Seller" and, together with Buyer, the "Parties"), for the Bankruptcy Estate of Jeremy Michael Baker and Chelsey Lynn Baker (Bankruptcy Case No.: 9:20-BK-10006-MB) ("Debtors").

When fully-executed below, this Counteroffer will constitute conclusive evidence of the contract for the sale and purchase of the Property (the "Sale") and the Parties agreement for the Sale, subject to approval by the Bankruptcy Court in the Debtor's bankruptcy case and further or more complete documentation in Seller's discretion. **This Counteroffer Supersedes the Buyer's Offer.** Seller may elect to deem this Counteroffer the definitive agreement between the Parties regarding the Sale.

1. **Purchase Price:** The purchase price for the Property shall be \$720,000.00; all cash (the "Purchase Price").
2. **Initial Deposit:** Within two (2) business days following Buyer's execution of this Counteroffer, Buyer shall deliver to escrow, together with an executed copy of this Counteroffer, the sum of \$21,600.00, to be applied toward the Purchase Price (the "Deposit"), as follows:

Fidelity National Title Company
Escrow Officer: Bobbi Arnold
7055 Morro Road
Atascadero, CA 93422
(805) 462-5900; barnold@fnf.com

3. **Due Diligence Period:** Buyer acknowledges that he/she/it is familiar with the Property and that the Buyer has previously viewed the Property. Nevertheless, at Buyer's sole expense, Buyer shall have until 2:00 p.m. PDT, Tuesday, August 18, 2020, to obtain all investigations, appraisals and tests, and to complete any and all due diligence which the Buyer desires (the "Due Diligence Deadline"). By no later than the Due Diligence Deadline, Buyer may advise Seller, in writing, of his/her/its election to cancel the Sale, in which case Buyer shall receive a full refund of the Deposit (the "Notice to Cancel"). Absent Buyer's submission of a Notice to Cancel in accordance with this paragraph 3, the Sale shall be without any further contingencies or due diligence requirements of the Buyer.

Without limiting the generality of the foregoing, Buyer's silence shall be deemed an acceptance and affirmative election to proceed with the Sale without any further contingencies or due diligence requirements.

4. Bankruptcy Court Approval: The Sale is expressly subject to Bankruptcy Court approval in the Debtors' bankruptcy case. As soon as reasonably practical following expiration of the Due Diligence Deadline without Buyer's submission of a Notice to Cancel, the Seller shall file a motion to approve the Sale with the Bankruptcy Court pursuant to section 363 of the United States Bankruptcy Code (11 U.S.C. § 363) (the "Approval Motion"). As part of such motion, the Seller shall request a finding of the Buyer's "good faith" in accordance with section 363(m) of the Bankruptcy Code.
5. Tender of Balance of Purchase Price/Closing: The Sale shall close, with Buyer tendering the full Purchase Price, not more than fifteen (15) calendar days after the entry of an order of the Bankruptcy Court authorizing the Sale.
6. Property Sold "As is" "Where is": The Buyer acknowledges that the Seller is a Trustee appointed to administer a Bankruptcy Estate. The Seller and or Seller's agents have not, and will not, inspect the Property or determine its condition, fitness or use for any particular purpose, nor will any of them provide any written disclosures, guarantees or warranties of any kind. Seller and Seller's agents are exempt from complying with the requirements of Article 1.5 of the California Civil Code Sections 1102-1102.17 relating to disclosures upon transfer of real property. **The sale shall be "as-is" and "where is" with no warranty or recourse whatsoever.** If any state or local ordinance laws require that the Property be brought into compliance, the Buyer, at his/her/its sole expense, shall comply with and pay for any such requirements.
7. Transfer of Property: Transfer of the Property by Seller shall be by Bankruptcy Trustee's Deed. The Seller shall convey and the Buyer shall accept the marketable title to the Property that will be insured by Fidelity National Title Company, without material exception, subject only to the terms of this Counteroffer and any further documentation of the Sale consistent with this Counteroffer.
8. "Intentionally Omitted."

9. Assessments, Taxes and Escrow fees: The following assessments, taxes and other costs shall be allocated as follows: (a) all allowable assessments and real property taxes shall be prorated through the closing date of the Sale to the applicable accounts of the Seller and the Buyer, such that the amounts applicable to the account of the Buyer shall not be deducted from the Purchase Price; (b) escrow fees shall be split equally between the Buyer and the Seller (50/50), such that the amounts allocable to the Buyer shall not be deducted from the Purchase Price; (c) the Seller shall pay real property transfer tax (County and State only) and the costs of a standard issue title insurance policy, such that these taxes and costs shall not be deducted from the Purchase Price; and (d) City transfer tax shall be split equally between Buyer and Seller (50/50), such that the amount allocable to the Buyer shall not be deducted from the Purchase Price. **All other costs are at Buyer's sole expense and are not to be deducted from the Purchase Price.**
10. Overbid: The Sale is subject to notice to creditors and other parties and shall be subject to higher and better bid through and including the hearing on the Approval Motion, pursuant to sale and overbid procedures determined in the Seller's sole discretion and subject to Bankruptcy Court approval.
11. Brokers and Commissions: The Buyer is represented by Keller Williams Realty Central Coast, DRE #02005015, Owen W. Schwaegerle, agent, DRE #02040597 ("KWRCC"), and the Seller is represented by Dutch Nichols, Broker, DRE #00551990 ("DN"). Subject to Court approval, the Seller shall pay commission as follows, through escrow: Five percent (5%) of the Purchase Price, 2.5% to KWRCC, and 2.5% to DN. No commission shall be due and payable except from the cash proceeds of an actual sale of the Property to the Buyer and upon closing of such sale.
12. Seller Right to Terminate: The Seller may decline, at her option and sole discretion, to consummate the Sale for any reason, including without limitation: (a) the dismissal or closure of the Debtors' bankruptcy case; (b) the conversion of the Debtors' Chapter 7 bankruptcy case to any other chapter under the Bankruptcy Code; (c) the inability to subordinate any liens on the Property to the expenses of administration; (d) the inability to obtain approval of the Sale by the Bankruptcy Court; or (e) the inability to sell the Property on the terms and conditions set forth herein. The Seller reserves the right, in her sole discretion, to determine not to consummate, and to

terminate, the sale of the Property by serving a notice of such termination on the Buyer. No liability or obligations shall accrue to the bankruptcy estate or the Seller, either personally or in her capacity as Trustee, as a result of any such termination. The Buyer's sole remedy, in the event that escrow fails to close as a result of Seller's inability to close escrow, shall be a refund of the Deposit in full.

13. **Non-Refundability and Forfeiture of Deposit:** Except as set forth above in paragraph 12 to this Counteroffer, immediately upon expiration of the Due Diligence Deadline without Buyer's submission of a Notice to Cancel in accordance with paragraph 3 to this Counteroffer, the entirety of the Deposit shall be absolutely non-refundable and forfeited to the Seller. Notwithstanding the immediately preceding sentence, in the event: (a) the Bankruptcy Court enters an order that does not authorize Seller to sell the Property to the Buyer; or (b) the Bankruptcy Court enters an order that authorizes the sale to another bidder and the Buyer is not a backup bidder, Seller shall refund the entire Deposit to the Buyer within ten (10) calendar days following entry of such order of the Bankruptcy Court. In the event the Buyer is overbid and is a backup bidder, Seller shall refund the entire Deposit to the Buyer only if the Sale closes to the winning bidder and within ten (10) calendar days following such closing.

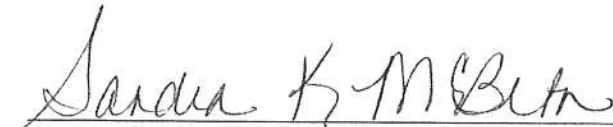
DS
M

(Buyer's initials)

(Buyer's initials)

14. **Escrow Instructions:** Escrow instructions shall be signed by Buyer and Seller within five (5) calendar days after execution of this Counteroffer. In the event that Buyer is unable to close escrow within fifteen (15) calendar days after entry of the Bankruptcy Court's order authorizing the Sale (the "Closing Date"), the Buyer shall compensate the Seller three hundred dollars (\$300.00) per day for each day beyond the Closing date that the Sale does not close for a total extended period of no more than ten (10) calendar days. Thereafter, the Seller shall have absolute discretion to either: (a) provide further extensions of the Closing Date at the same rate of compensation; or (b) terminate the Sale to the Buyer and retain the entirety of the Deposit as liquidated damages, unless (1) the failure to close is not due to any fault of the buyer or (2) Buyer's lender refuses to fund the loan and that the refusal was not caused by the buyer in which case the deposit will be returned to the buyer.

15. Bankruptcy Court Jurisdiction: The Bankruptcy Court for the Central District of California, Northern Division ("Court"), shall have jurisdiction to interpret and enforce the terms of this Counteroffer/agreement. This Counteroffer/agreement shall be construed pursuant to the laws of the State of California, except to the extent preempted by applicable Federal bankruptcy law.
16. Expiration of Offer: This Counteroffer shall expire, if not executed by Buyer and delivered to Seller's agent, Dutch Nichols, DRE #00551990 on or before 2:00 p.m. PDT, Wednesday August 5, 2020.
17. Multiple Offers: Buyer recognizes that multiple offers and/or counteroffers (in addition to the instant Counteroffer) may be pending and Seller reserves the right, per Paragraph 12, to choose which contract to submit to the Bankruptcy Court for approval.

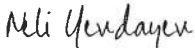
Seller

Sandra McBeth, Solely in her Capacity as Chapter 7 Trustee
For the Bankruptcy Estate of Jeremy Michael Baker
And Chelsey Lynn Baker, 9:20-BK-10006-MB

July 31, 2020
Date

Read, Understood, Agreed To and Accepted:**Buyer(s)**

DocuSigned by:



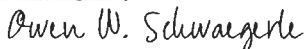
Neli Yevdayev – Buyer

8/1/2020

Date

Date

DocuSigned by:



Owen W. Schwaegerle DRE #02040597) - Buyer's Agent

8/1/2020

Date

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
8 E. Figueroa Street, Suite 300, Santa Barbara, CA 93101

Notice of Sale of Estate Property with

A true and correct copy of the foregoing document entitled (*specify*): attachments

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) Sept. 3, 2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) Sept. 3, 2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) Sept. 3, 2020, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed. Fedex:

Hon. Martin R. Barash
US Bankruptcy Court
21041 Burbank Blvd – Suite 342
Woodland Hills, CA 91367

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Sept. 3, 2020
Date

Evelyn R. Downs
Printed Name


Signature

ECF:

Raymond Jereza ecfcacb@aldridgepite.com, rjereza@ecf.inforuptcy.com
Nancy L Lee bknotice@mccarthyholthus.com, nlee@ecf.courtdrive.com
Sandra McBeth (TR) jwalker@mcbethlegal.com, CA65@ecfcbis.com;ecf.alert+McBeth@titlexi.com
Misty A Perry Isaacson misty@ppilawyers.com, ecf@ppilawyers.com;perryisaacsonmr51779@notify.bestcase.com
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Felicitia A Torres torres@g-tlaw.com
Leslie A Tos Ltos@farmerandready.com, smeyer@farmerandready.com
United States Trustee (ND) ustregion16.nd.ecf@usdoj.gov